

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

**SUBJECT:** Department of Development and Environmental Services File No. **E9600757**

**JUDY MULHAIR**  
Code Enforcement Appeal

Location: 12119 Southwest Cove Road, Vashon

Appellant: Judy Mulhair *represented by*  
**Robert D. Johns**  
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King County: Department of Development and Environmental Services  
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**DECISION SUMMARY:**

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny in part Grant in part

**EXAMINER PROCEEDINGS:**

Hearing Opened:	September 25, 2002
Hearing Closed:	September 25, 2002

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

## FINDINGS OF FACT:

1. On June 20, 2002 a revised notice and order was issued by the King County Department of Development and Environmental Services, Code Enforcement Section, to Judy Mulhair concerning a seven acre parcel located in the RA 5P zone at 12119 Southeast Cove Road, Vashon Island. The property has been cited for alteration of an agricultural building without required permits and its conversion to a recreation hall containing lodging units; construction of an office and carport building without required permits; construction of a log cabin without required permits; and placement of a propane tank in violation of fire protection regulations. Ms. Mulhair, through her attorney Robert Johns, has filed a timely appeal to the notice and order.
2. The current proceeding is the latest occurrence in an ongoing controversy between the Appellant and DDES over use of the subject property as a youth hostel. Until a few months ago the County regarded the youth hostel to be a prohibited use in the RA 5 zone. This position was reversed on August 14, 2002 within a letter from County Executive Ron Sims which determined that the hostel was a permitted use as a campground. However, the County's long history of viewing the youth hostel use as prohibited has left in its wake continuing uncertainty over the status of the various structures on the parcel. Although most of the structures on the property were built under authority of County permits, the intended uses of such structures were not fully disclosed by the Appellant in an apparent effort to avoid irresolvable problems over the use issue. Moreover, when later attempts were made to obtain permits to convert the structures to a residential occupancy, the inability to settle the use problems prevented DDES from processing the required permit applications. Thus, while the use question now appears to have been decided favorably to the Appellant, a residue of the use controversy continues to exist within the structural citations contained in the current notice and order. These matters have been further exacerbated by inconsistent enforcement policies on the part of DDES, which have fluctuated between the opposing poles of leniency and strict enforcement, and by convoluted and unproductive disquisitions attempting to separate "primary" from "accessory" structures.
3. The oldest structure on the property subject to the notice and order has been designated the office/carport building. According to the Appellant's appeal statement, this structure is more than 100 years old. Appellant testified that this was originally an agricultural building that was partially demolished and adapted to its current use as an office and telephone booth, with an outside barbecue area appended. Recent modifications include new siding, a boardwalk and a false front. DDES staff has presented no evidence that contradicts Appellant's assertions as to the antiquity of this structure.
4. The Appellant constructed a log cabin on the property in 1987 pursuant to a building permit issued by the County. A copy of the permit cover page has been submitted to the record and indicates that the building was not originally approved for use as a residence and was to be unheated. But it is clear that this structure's primary utility is as a residential structure for youth hostel patrons. As such, its conversion to residential use requires the issuance of appropriate County building permits, including review for fire safety.
5. An on-site barn was constructed by the Appellant in 1995 under a building permit issued for an agricultural storage building. Small sleeping units have been installed on the eastern side of the barn, while the ground floor interior contains a community kitchen and restroom facilities. Within the downstairs main floor youth hostel recreational activities are also conducted. An

upstairs loft has been used as a television room, and a reconstructed eastern wing is used for storage. As a consequence of the current enforcement action, the residential use of the rooms on the east side of the barn has been discontinued and these spaces are presently used for storage as well.

6. The position of DDES with respect to the use of the barn has fluctuated over time. On June 19, 1996 Tom McDonald, Manager of the Building Services Division, sent a letter to the Appellant authorizing use of the kitchen and bathroom facilities as accessory or support facilities to the campground. This position was reversed a year later with an August 1, 1997 letter that contains an elaborate menu of property and structural upgrades sought by DDES. The Department later again relaxed its position with respect to guest use of the bathroom facilities in an email to the Appellant's attorney dated July 10, 1998. As previously noted, the Appellant's efforts to legally convert the barn to youth hostel use have been frustrated over the years by the Department's view that such activity was prohibited within the zone.
7. The Appellant has also submitted to the record considerable documentation and testimony describing instances in which the Department has failed to enforce its building code requirements on Vashon Island regarding properties similar to the Appellant's. These other Vashon properties include a variety of guest cottage and bed and breakfast operations. The Department's response to this testimony was to point out that its enforcement process is complaint-driven, and in the absence of complaints, it does not actively seek out code violators.
8. The citation within the notice and order concerning the legality of the propane tank on the Appellant's property appears to have been resolved. Appellant stated that the tank has been moved, and a letter from a propane supplier suggests that the size of the tank is below the County's permitting threshold. These representations will be subject to verification through a County inspection.

#### CONCLUSIONS:

1. The Appellant's allegations that DDES should be equitably estopped from enforcing its notice and order against the Appellant's property based on a pattern of inconsistent enforcement with respect to similar properties raises a defense that is beyond the jurisdiction of this administrative tribunal to adjudicate. Nonetheless, in view of the County's recent determination that the youth hostel use is permitted outright within the RA zone and the mixed messages sent over the years to the Appellant concerning the legality of her various structures and uses, it is reasonable both that DDES should be held to some of its prior written commitments to the Appellant and that the citations within the notice and order should be strictly construed. In addition, at this point the primary public concern with respect to the permitting review of the property should be the need to assure fire safety for youth hostel guests, and our review of the record will reflect this emphasis.
2. The uncontroverted testimony of the Appellant was that the office/carport building was constructed prior to the adoption of a County building permit system. In addition, the structure has no residential use and raises minimal safety concerns. There is a potential issue with respect to this structure concerning whether its later alteration may have required County building permits, but the level of structural change seems to have been relatively minor, and the notice and order citation was issued for construction and not for alteration. Accordingly, the appeal is

granted with respect to the citation for construction of an office/carport building without required permits and approvals.

3. While the log cabin on the Appellant's site was constructed under permit authority, it seems unlikely that it was ever intended for other than residential use, and therefore the original permit application was deficient as to its occupancy declaration. This structure needs to be approved for residential occupancy pursuant to appropriate permit review, particularly as such review may relate to fire safety issues. The appeal is denied with respect to the log cabin construction citation.
4. The barn was also constructed as an agricultural storage building without full disclosure of its intended use as part of the youth hostel program. Even so, the ground floor kitchen, bathroom and recreational uses raise no serious safety issues, and the kitchen and bathroom uses specifically were designated by the County as permitted in 1996. Based on this history, these uses should be allowed to continue without further permit requirements. On the other hand, use of the upstairs loft or any overnight sleeping use of the barn raise fire safety issues that need to be reviewed. If such further uses are contemplated, permits for a use conversion need to be obtained.

#### DECISION:

The appeal is GRANTED in part and DENIED in part. The appeal is granted with respect to the citations for the office/carport building, the propane tank and ground floor non-sleeping uses of the barn, and denied in all other respects.

#### ORDER:

1. DDES shall inspect the propane tank to confirm that its size falls below permitting thresholds and that it complies with the Uniform Fire Code as to location. If no written directive to correct violations has been issued to the Appellant by DDES within 30 days of the date of this order, the propane tank shall be presumed to be compliant.
2. Within the ground floor area of the agricultural building the kitchen and bathroom facilities may be used by hostel guests, and eating and recreational activities may also occur there. Burlap wall and ceiling coverings shall be removed. Use of the agricultural building for sleeping facilities, or any use of the upstairs loft for guest activities, shall require County permits and inspections for conversion of the structure to a new use.
3. County permits and inspections are required for conversion of the log cabin to residential use. No penalties shall be assessed against the Appellant's property if a complete building permit application therefor is submitted within 45 days of the date of this order.
4. With regard to any permits required for compliance with this order, the Appellant shall pay only the normal application fees. No penalties shall be assessed for post-construction permit submittals.

ORDERED this 1st day of November, 2002.

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Stafford L. Smith  
King County Hearing Examiner

TRANSMITTED this 1st day of November, 2002, to the following parties and interested persons:

Robert D. Johns  
Johns Monroe Mitsunaga PLLC  
1500 114th Ave. SE, Ste. 102  
Bellevue WA 98004

Judy Mulhair  
12119 SW Cover Road  
Vashon WA 98070

Elizabeth Deraitus  
DDES/BSD  
Code Enforcement Supervisor  
MS OAK-DE-0100

Erroll Garnett  
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Beverly Harrelson  
DDES/BSD  
Code Enforcement Section  
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Heather Staines  
DDES/BSD  
Code Enforcement-Finance  
MS OAK-DE-0100

Steve Wright  
DDES/BSD  
Code Enforcement  
MS OAK-DE-0100

### NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision. The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.

### MINUTES OF THE SEPTEMBER 25, 2002 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9600757.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Steve Wright and Errol Garnett, representing the Department; Robert D. Johns, representing the Appellant; and Judy Mulhair.

The following exhibits were offered and entered into the record:

Exhibit No. 1	DDES Staff Report
Exhibit No. 2	Copy of Notice & Order and Cover Letter to Judy Mulhair from Elizabeth Deraitus Dated June 20, 2002
Exhibit No. 3	Copy of Appeal received July 21, 2002
Exhibit No. 4	Photos taken by Errol Garnett in July, 2001 and July, 2002
Exhibit No. 5	Copy of Finaled Building Permit B94A2876
Exhibit No. 6	Copy of Canceled Change of Use Permit for the Barn – B95C0068
Exhibit No. 7	Copy of Comment Screen for Case E9600757 as of July 19, 1996

Exhibit No. 8	Copy of Finaled Building Permit to Rebuild and Enlargement-AG Storage Building – B97A0301
Exhibit No. 9	Letter to Judy Mulhair from Thomas McDonald dated May 1, 1996
Exhibit No. 10	Letter to Judy Mulhair from Thomas McDonald dated June 19, 1996
Exhibit No. 11	Letter to Judy Mulhair from Thomas McDonald dated August 1, 1997
Exhibit No. 12	Copy of first Notice & Order issued November 9, 2001
Exhibit No. 13	Letter to Judy Mulhair from Ron Sims dated August 14, 2002
Exhibit No. 14	Vashon Island Ranch/Hostel Advertisement
Exhibit No. 15	Copy of Site Plan Showing Locations of Existing Buildings
Exhibit No. 16	Letter to Robert Johns from Jim Warren dated September 9, 2002
Exhibit No. 17	Copy of Application for Permit issued January 11, 1986
Exhibit No. 18	Packet of Information on Septic Permit Issued
Exhibit No. 19	Email to Robert Johns from Greg Kipp dated July 10, 1998
Exhibit No. 20	Summary List of Vashon Island Code Enforcement (or lack thereof)
Exhibit No. 21	Packet of DDES Files
Exhibit No. 22	Construction Permit Issued by DDES on February 27, 1997

SLS:gao  
E9600757 RPT